

D/14/22-23

Decision of the Certification Officer on an application made under Section 55(1) of
the Trade Union and Labour Relations (Consolidation) Act 1992

Sidhu

V

National Education Union

Date of Decision

22 July 2022

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Decision

1. Upon application by Mr Jagbir Singh Sidhu (“the applicant”) under section 55 (1) of the Trade Union and Labour Relations (Consolidation) Act 1992 (“the 1992 Act”):

Pursuant to section 256ZA of the 1992 Act, I strike out the claimant’s complaint below on the grounds that the complaint, as advanced by the claimant, has no reasonable prospect of success.

Background

2. Mr Sidhu submitted an application to make a complaint on 24 April 2022.
3. Mr Sidhu is a member of the National Education Union (“NEU” or “the Union”). The Union began district elections for executive members in January 2021 for positions to be held between 1 September 2021 to 31 August 2023.
4. Mr Sidhu submitted his election statement on 15 March 2021. On 18 March 2021 the Union informed Mr Sidhu that he was not eligible to stand in the election because his membership had lapsed for a period in 2020.
5. Following correspondence with my office, Mr Sidhu, confirmed the complaint as follows:-

Complaint

On the 16th May 2021 I wrote to the President of the NEU requesting a re-run for District 7 of the NEC-Executive Seat based on the new evidence which I received from the NEU stating that my membership had never lapsed. My nomination had been disqualified earlier after my photo with a turban was submitted. The NEU acted unreasonably and excluded me from standing as a candidate after 16th May 2021.

The Relevant Statutory Provisions

6. The provisions of the 1992 Act which are relevant for the purposes of this application are as follows:-

54 Remedy for failure to comply with requirements: general.

(1) A person alleging a failure on the part of a trade union to comply with any of the requirements of this Chapter may apply for—

(a) a declaration under section 55 (by the Certification Officer), or

(b) a declaration under section 56 (by the court); but the Certification Officer may also exercise the powers under section 55 where no application is made.

(2) An application for a declaration under section 55 or 56 may be made only—

(a) by a person who is a member of the trade union (provided, where the election has been held, he was also a member at the time when it was held), or

(b) by a person who is or was a candidate at the election; and the references in those sections to a person having a sufficient interest are to such a person.

(3) Where an election has been held, no application under those sections with respect to that election may be made after the end of the period of one year beginning with the day on which the union announced the result of the election.

55 Powers of Certification Officer.

(1) Where the Certification Officer is satisfied that a trade union has failed to comply with any of the requirements of this Chapter, either—

(a) on an application by a person having a sufficient interest (see section 54(2)), or

(b) without any such application having been made, the Officer may make a declaration to that effect.

(2) Before deciding the matter the Certification Officer—

(a) may make such enquiries as the Officer thinks fit,

(b) must give the union and the applicant (if any) an opportunity to make written representations, and

(c) may give the union and the applicant (if any) an opportunity to make oral representations.

(3) If he makes a declaration he shall specify in it the provisions with which the trade union has failed to comply.

(4) Where he makes a declaration and is satisfied that steps have been taken by the union with a view to remedying the declared failure, or securing that a failure of the same or any similar kind does not occur in future, or that the union has agreed to take such steps, he shall specify those steps in the declaration.

(5) Whether he makes or refuses a declaration, he shall give reasons for his decision in writing; and the reasons may be accompanied by written observations on any matter arising from, or connected with, the proceedings.

(5A) Where the Certification Officer makes a declaration he shall also, unless he considers that to do so would be inappropriate, make an enforcement order, that is, an order imposing on the union one or more of the following requirements—

(a) to secure the holding of an election in accordance with the order;

(b) to take such other steps to remedy the declared failure as may be specified in the order;

(c) to abstain from such acts as may be so specified with a view to securing that a failure of the same or a similar kind does not occur in future.

256ZA Striking out

(1) At any stage of proceedings on an application or complaint made to the Certification Officer, she may—

(a) order the application or complaint, or any response, to be struck out on the grounds that it is scandalous, vexatious, has no reasonable prospect of success or is otherwise misconceived,

(b) order anything in the application or complaint, or in any response, to be amended or struck out on those grounds, or

(c) order the application or complaint, or any response, to be struck out on the grounds that the manner in which the proceedings have been conducted by or on behalf of the applicant or complainant or (as the case may be) respondent has been scandalous, vexatious, or unreasonable.

(4) Before making an order under this section, the Certification Officer shall send notice to the party against whom it is proposed that the order should be made giving him an opportunity to show cause why the order should not be made.

The Relevant Rules of the Union

7. The Rules of the Union which are relevant for the purposes of this application are:-

5.11 Any member whose arrears of subscriptions exceed 13 weeks shall be deemed to have lapsed their membership, shall no longer be a member of the Union, will no longer be entitled to the benefits of membership and will not be entitled to hold office within the Union.

13.7 All members of the Union with at least three years' continuous membership at the start of the election process and other than associate and student members and those who have retired or otherwise left the profession, shall be eligible for nomination for or election to the Executive. Any member of the Executive who has commenced their term of office and then retires from active paid employment in the Education sector shall be entitled to complete their term of office.

Considerations and Conclusions

Complaint

8. Mr Sidhu's complaint is that the union acted unreasonably by excluding him from the election because his membership had lapsed for a period in 2020 and, that it only excluded him, after he submitted a photograph with a turban. He has not, however, provided me with any evidence, or argument, which supports his

assertion that the photograph influenced the Union's decision to exclude him from the election. The core issue for me to consider, therefore, is whether the Union acted within their Rules by refusing to accept Mr Sidhu's nomination on the grounds that his membership had lapsed for a period during 2020.

9. The Union told Mr Sidhu that his membership had lapsed between March 2020 and May 2020 because he had not paid his membership fees during that period. Mr Sidhu has provided me with copies of correspondence between himself and the Union in 2020 and 2021 including:
 - a. An e-mail dated 26 May 2020 from Sian Bassett, Assistant General Secretary, Membership and Recruitment, explaining that his membership would lapse on 5 June 2020 if he did not make arrangements for payment of the outstanding amount.
 - b. An e-mail he sent to the membership department on 28 May 2020 confirming that he wished to make full payment of the outstanding amount and to debit his account accordingly. He also confirmed that he could also make a one-off payment via his credit card if needed.
 - c. An e-mail from the membership department dated 30 June 2020, confirming that Mr Sidhu had set up a direct debit on 3 June and that the outstanding balance will be taken on 1 July 2020.
 - d. An e-mail dated 4 May 2021 from Nicola Tracey, from the Union Membership Department, in which she stated that Mr Sidhu had continuous membership with the Union since 15 June 2016.
 - e. A letter dated 10 May 2021 from Sian Bassett to Mr Sidhu which explained that Ms Tracey's e-mail was inaccurate and that his membership had lapsed.
10. It is not disputed that Mr Sidhu did not make any subscription payments during March, April, and May 2020. There appears to be an agreement that he set up a new direct debit on 3 June 2020, and that the first payment under that mandate was made on 1 July 2020. As this payment was made after 5 June 2020, the date

which was given in Ms Bassett's email of 26 May 2020, the Union considered that his membership had lapsed under Rule 5.11.

11. The Union's Rule 13.7 requires that any member standing in the NEC District election must have 3 years continuous membership at the start of the election process. As Mr Sidhu's membership had lapsed in 2020 the Union could not accept his nomination. This was explained to Mr Sidhu by Ms Avis Gilmore, Deputy General Secretary in her letter of 18 March 2021 and by Mr Robin Bevan, President, on 7 April 2021.
12. Rule 5.11 is clear that where a members' arrears of subscriptions exceed 13 weeks their membership is deemed to be lapsed. Mr Sidhu agrees that the relevant payments were not taken from his bank account during March, April, May and June 2020 and that the Union did not take a payment under his new direct debit mandate until 1 July 2020. On that basis it seems clear that his membership had lapsed and that, under Rule 13.7, he was ineligible to stand in the election for the NEC.
13. Mr Sidhu's position, however, is that the Union should not have treated his membership as lapsed because he had made arrangements, by 5 June 2020, to pay his outstanding balance as requested by Ms Bassett. In his view, the fact that the Union did not take the payment for the outstanding balance until 1 July 2020 should not have resulted in his membership lapsing. Having read the email exchanges identified above, I understand why he feels this way; however, it is clear that there was a break in his payments of more than 13 weeks which resulted in his membership having lapsed during the three years prior to the election. On that basis it is clear to me that his complaint has no prospect of success.
14. I have considerable sympathy for Mr Sidhu as it appears that he followed the advice given by the Union when he set up his direct debit and he was told by Ms Tracey, in May 2021, that his membership had not lapsed. I note, however, that the Union quickly acknowledged that Ms Tracey's e-mail was inaccurate and have also reviewed their correspondence around subscriptions falling into arrears to avoid confusion in the future. I hope that this will avoid similar cases in the future.

15. Finally, the Union asked me to consider whether Mr Sidhu had submitted his complaint to my office within the statutory time limit given that elections closed on 29 April 2020. Mr Sidhu made his complaint under Section 54 of the 1992 Act which requires that any complaints must be submitted to me by the end of the period of one year beginning with the day on which the Union announced the result of the election. Mr Sidhu's complaint to me was submitted on 24 April 2021 which is within the statutory time limit.

Conclusion

16. Section 256ZA of the Act 1992 Act requires me to send notice to the party against whom the strike out order shall be made giving them an opportunity to show cause why the order should not be made. My office wrote to Mr Sidhu on 16 June 2022. This letter stated that having considered the applications and further correspondence, I was minded to exercise my powers under section 256ZA of the 1992 Act to strike out his complaint on the grounds that it had no reasonable prospect of success. The letter invited Mr Sidhu to provide written representations as to why I should not strike out his complaint. In response, Mr Sidhu did not provide me with any additional evidence or argument which showed that his complaint had a reasonable prospect of success.

17. Consequently, for the reasons given above, I am satisfied that the complaint to me has no reasonable prospect of success.

A handwritten signature in black ink, appearing to read 'Sarah Bedwell', is written over a horizontal line.

Sarah Bedwell
The Certification Officer